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***Provincial Nominee Programs in Western Canada:
The Silver Bullet?***

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1. Introduction

Provincial Nominee Programs in Canada have developed independently and differently according to federal-provincial arrangements, the objectives of the particular province and the expediency with which each program has been used to promote local economic and social interests. In Alberta and British Columbia, provincial governments are evaluating the growth and direction of their own programs with a view to meeting the needs of local employers based on experience and data gathered in their own programs and those of other provinces, federal-provincial working groups and consultations with business and industry stakeholders.

In May 2008, the PNPs in Alberta and British Columbia represent two separate and unique approaches to addressing shortages of both professionals and trades people among Canadian businesses. Based on the current situation in Western Canada, in which labour market opinions (LMOs) are taking six months or more and federal skilled worker and business immigration programs are taking several years (for foreign workers that are otherwise in demand around the world), this paper provides a critical overview of these two programs and suggests some best practices for Western Canadian employers, foreign workers and their legal representatives. Ultimately, we consider whether PNPs in Western Canada are in fact a silver bullet for businesses facing critical shortages with respect to human resources and whether we recommend these programs to businesses competing for people with skills and capacity to deliver services in exchange for the right to permanent residence in Canada.

2. Background

(a) Alberta Provincial Nominee Program

The Alberta Provincial Nominee Program came into existence pursuant to the Canada-Alberta Agreement on Provincial Nominees dated March 2, 2002 between the Government of Canada and the Government of Alberta.¹ The original agreement had a two-year term which was extended about five times for limited terms ranging from six months to two years, depending on political circumstances.² On May 11, 2007, the original Canada-Alberta Agreement was replaced by the Agreement for Canada Alberta Cooperation on Immigration (the “Cooperation Agreement”).³

¹ The Canada - Alberta Agreement on Provincial Nominees was signed on March 2, 2002 pursuant to Section 95 of the *Constitution Act, 1867* and Section 108(2) of the *Immigration Act*. Section 108(2) of the *Immigration Act* authorized the Minister of Citizenship and Immigration, with the approval of the Governor in Council, to enter into an agreement with any province or group of provinces for the purpose of facilitating the formulation, coordination and implementation of immigration policies and programs. Section 8 of the current *Immigration and Refugee Protection Act* authorizes the Minister to enter into federal-provincial agreements and requires the annual publication of a list of the agreements in force.

² The original agreement provided for Alberta to nominate up to 400 provincial nominees during a two-year pilot project, which could be extended by mutual written agreement. In March 2007, the program had produced approximately 2,400 provincial nominees. At that time, its annual targets were: 525 nominees for the fiscal year ending March 31, 2007, increasing to 1,200 for the fiscal year ending on March 31, 2008 and for the two subsequent years.

³ Citizenship and Immigration Canada, News Release, Calgary, May 11, 2007: “Canada and Alberta sign new immigration agreement”, online: <http://www.cic.gc.ca/english/department/media/releases/2007/2007-05-11.asp> (11 May 2007). We note that the Government of Alberta commonly refers to the Cooperation Agreement as “permanent”. However, section 7.4.5 of the Cooperation Agreement provides that “Either Party may terminate this Agreement at any time by providing at least twelve (12) months notice in writing to the other Party...”

The recitals to the Cooperation Agreement explicitly state that “an Alberta specific immigration agreement will support the Province’s efforts to address unique needs, resulting from unprecedented economic growth and development.”⁴ Its objectives include, *inter alia*, “to respond to Alberta’s current and emerging social, demographic, economic development and labour market priorities through immigration policies and programs; recognizing the role of immigration in supporting the economic development of communities in Alberta, including francophone communities.”

The Cooperation Agreement provides on Policy and Program Development that Canada will establish general immigration policies and develop an annual immigration plan in consultation with Alberta and other provinces and territories and that Alberta will provide Canada with an annual provincial nominee plan and comment on Canada’s immigration plan with respect to immigration to Alberta. In addition, “Canada in consultation with Alberta will develop an annual delivery plan for national immigration targets that will include Alberta’s specific targets for Alberta for provincial nominees...”⁵

The Cooperation Agreements provides as follows with respect to federal-provincial authority to nominate provincial nominees:

Alberta will be responsible for the assessment of provincial nominees, as outlined in Annex A. In exercising this responsibility, Alberta will develop Provincial Nominee Program streams as appropriate to meet Alberta’s immigration needs. Canada will respect the nomination decision of Alberta insofar as nominations do not contravene admissibility criteria as outlined under IRPA, the criteria for Provincial Nominee Class set out in the Regulations under IRPA or any successor Act, and the eligibility criteria as set out by the Province. The processing and admission to Canada of provincial nominee candidates nominated by Alberta will be completed as expeditiously as possible with a view to achieving targets that have been integrated into Canada’s annual delivery plan.⁶

Based on the language above, it appears that Alberta has significant discretion to assess provincial nominees and develop streams to meet its needs, within the negotiated parameters of the Annex and Canada’s annual delivery plan. It will be interesting to see whether the Annex will include a business program, because this has been omitted from the body of the Cooperation Agreement; whereas the original agreement specifically provided for an “Immigration-Linked Investment Scheme”. Implementing a business program is understood to be a consideration for the future of the program, as is the family stream.

It is also noteworthy that the Cooperation Agreement commits Canada and Alberta to make best efforts to develop a pilot project, within twelve months (e.g. May 2008), to test a model for federal / provincial collaboration to identify and facilitate the processing of health care professionals destined to Alberta. The Citizenship and Immigration Canada (CIC) Background on the Cooperation Agreement states:

⁴ Alberta Employment and Immigration, online: http://employment.alberta.ca/documents/WIA/WIA-IM_canalta_framework.pdf (11 May 2008).

⁵ Cooperation Agreement, Section 4.1.2. Overall, Section 4 appears to outline a compromise whereby Canada gives provincial nominees and Alberta takes its proportionate share of refugees, taking into account the potential financial and program impact on Alberta of refugees who are deemed to be vulnerable, in urgent need of protection, or who have special needs.

⁶ *Ibid.*, Section 4.2.3. Annex A, which is to outline Alberta’s criteria for the assessment of provincial nominees, has not been completed. Section 5.3.4 provides that “Canada and Alberta shall make best efforts to successfully complete the negotiation of the Annex no later than eight (8) months from the date this agreement is signed by both Parties (e.g. January 11, 2008).

Through the agreement, Canada will search the existing inventory of federal skilled worker applicants, and identify specific health-care professionals destined for Alberta. Candidates in the inventory who have already received preliminary approval of their application would be referred to the appropriate licensing bodies in Alberta to begin the process of foreign credential recognition. Candidates who have not yet received preliminary approval of their application would be referred to the province of Alberta for consideration under the Provincial Nominee Program, where they would benefit from faster processing.⁷

This statement is particularly interesting since the proposal of Bill C-50, *Budget Implementation Act, 2008*, which is currently before Parliament. If passed, Bill C-50 would result in the amendment of the *Immigration and Refugee Protection Act*, to enable the Minister to establish priorities and issue instructions regarding processing of applications for permanent residence with the objective of mining the existing backlog of applications for those with skills in demand. The Canadian Bar Association, Citizenship and Immigration Law Section has made submissions and will be appearing before Parliamentary committees to present its position on Bill C-50.

As for the pilot project for health care professionals, in January 2007, CIC provided to the Alberta PNP information on applicants in the federal skilled worker class who were doctors, registered nurses, pharmacists and physiotherapists from the Philippines and had indicated that Alberta was their intended settlement location in Canada. The Alberta PNP contacted these applicants to provide information on the systems for recognizing foreign credentials applicable to their occupations. In addition, on April 16, 2008, the Government of Alberta announced the establishment of two Health Career Centres in Edmonton and Calgary “to help doctors, nurses, pharmacists and other health professionals who received their training outside of Canada navigate the registration and licensing processes.”⁸ We also note that Service Canada in Edmonton is expediting LMO applications for health care professionals through processing in New Brunswick.

(b) British Columbia Provincial Nominee Program

The Governments of Canada and British Columbia signed the Agreement for the Canada - British Columbia Cooperation on Immigration in 1998. It was not, however, until 2001 that the BC PNP was implemented. The BC PNP was administered by the Ministry of Community, Aboriginal and Women's Services (Immigration Branch) which was located in Victoria, British Columbia. It initially started out with a program to nominate academic professors and skilled workers in designated health professions based on labour market shortages. In the fall of 2002 a business program was added, but this was administered by a different Ministry, the Ministry of Competitiveness, Skills and Enterprise in Vancouver. In late 2005, BC PNP was reorganized and it is now administered solely by the Minister of Economic Development (Economic Immigration Programs) in Vancouver.

The current BC PNP finds its authority in The Agreement for Canada - British Columbia Cooperation on Immigration. The purpose and objectives of the program are to increase the benefits of immigration to British Columbia based on economic priorities and labour market conditions. Nominations are intended to meet critical skills shortages and to facilitate the immigration of key individuals or businesses and the establishment of new and enhancement of existing businesses in British Columbia. The Province has the sole responsibility to assess nominee candidates who will be of significant benefit to the economy of

⁷ CIC Backgrounder, “Canada and Alberta – Improving cooperation on immigration”, online: <http://www.cic.gc.ca/english/department/media/backgrounders/2007/2007-05-11.asp> (2007 May 11).

⁸ Alberta News Release, “Centres offer new services to internationally educated health professionals” online: <http://alberta.ca/acn/200804/2332857BC098E-0897-B97C-7A04A210A5FD31DE.html> (2008 May 14).

British Columbia and have a strong likelihood of successfully establishing themselves in British Columbia. The agreement also states that nominees may be nominated on the basis of economic benefit to regional and community development.

The initial agreement for the BC PNP provided for a target of 500 nominees. The target for the year running April 1, 2007 to March 31, 2008 was 1,600. The province nominated 1,709 nominees, exceeding its target.⁹ These numbers make it the largest provincial nominee program in the country next to Manitoba (it is important to note that Québec's immigration program is not a provincial nominee program). The majority of the nominees were in the skilled worker category, with only 61 business nominees being given preliminary approval between 2006 and 2007.

The current agreement with the federal government signed in 2004 is for a five-year term. It is fully expected that the agreement will be renewed in 2009 pursuant to current negotiations.

3. Overview

(a) Alberta

The Alberta PNP is primarily an employer-driven program operated by the Government of Alberta in conjunction with Citizenship and Immigration Canada (CIC) to facilitate immigration to the Province of Alberta. For the purposes of the Alberta PNP, skilled workers are considered to be those in National Occupational Classification (NOC) levels O, A or B being management, professionals and trades with post-secondary education and apprenticeship training, respectively.

In addition to NOC levels O, A and B, the Alberta PNP has undertaken low-skilled pilot projects to address critical shortages in industries such as food processing, hospitality, transportation and more recently, manufacturing. These projects are developed and administered in consultation with industry associations and the relevant branches of the Government of Alberta on the basis of allocating a percentage of the total number of nominees for a given fiscal year to the particular project.

After signing the Cooperation Agreement, the Government of Alberta launched a significant expansion to the Alberta PNP on May 17, 2007, including the following streams:

- (i) Employer-Driven Stream: skilled workers, international graduates and semi-skilled workers (food and beverage processing, hotel and lodging, manufacturing and long haul trucking);
- (ii) Self-Employed Farmer Stream: primary agriculture only and minimum \$500,000 investment;
- (iii) Strategic Recruitment Stream Pilot Project: compulsory trades, engineering category and skilled workers in the United States with H-1B visa status;
- (iv) Semi-Skilled Food Services Pilot Project: 600 allocations in 3 occupations;
- (v) Other Streams: Consideration of policies with respect to family and business / entrepreneur streams.

⁹ Unofficial number provided by Ian Mellor, Director, Economic Immigration Programs in an interview on March 20, 2008.

(b) British Columbia

The program remains mainly an employer driven skilled worker immigration program operated by the Government of British Columbia in conjunction with CIC to facilitate immigration to British Columbia that will have economic benefits. The BC PNP is broken down into two very distinctive streams. The first is called Strategic Occupations and the other is Business Immigrants.

Despite having two streams, almost 95% of all nominees come to British Columbia under the Strategic Occupations stream. Strategic Occupations is further broken down into four distinctive categories, Skilled Workers, Designated Health Professionals, International Graduates and Entry Level and Semi - Skilled workers. The Semi-Skilled occupations stream is a two-year pilot project that commenced in February 2008. The majority of nominees arrive under the Skilled Worker category. The BC PNP like Alberta also only considers skilled workers to be those with the NOC levels O, A or B.

4. Organizational Structure

(a) Alberta

(i) Ministry of Employment and Immigration

Since the provincial election on March 3, 2008 and Premier Ed Stelmach named his cabinet on March 12, 2008, the Alberta PNP is under the mandate of the Ministry of Employment and Immigration (formerly Employment, Immigration and Industry) and The Honourable Hector Goudreau, Minister. The Minister's mandate, as set out in a letter dated March 27, 2008 includes leading the following initiatives:

- Increase the total off-reserve labour force of Alberta's First Nations, Métis and Inuit to 74,000 by 2010;
- Increase the number of international immigrants and temporary foreign workers to 50,000 by the end of 2009;
- *Double the number of workers entering the Provincial Nominee Program to 3000;*¹⁰
- Help newcomers to Alberta to integrate and settle into the community by increasing the support services provided to them;¹¹ and
- Management and Staffing.

The Alberta PNP is under the authority of Shannon Marchand, Executive Director, Immigration Policy and Programs. Since October 2005, Brad Trefan has been the Senior Director of the program. Current staffing includes: Joyce Conroy, Manager, Operations, Olga Rupil, Manager, Policy and Marketing, two Senior Program Officers and eight Program Officers (two more are on temporary leave), with an additional six program officers positions subject to recruiting efforts. The backgrounds of the program officers include employment experience with CIC in Vegreville

¹⁰ This target is listed under Strategic Priorities 2008-11 as part of "Alberta's Immigration Strategy" in the Government of Alberta's "Employment and Immigration Business Plan 2008-11" dated April 4, 2008 at 89, online: <http://www.finance.gov.ab.ca/publications/budget/budget2008/employment.pdf> (10 May 2008).

¹¹ News Release dated March 27, 2008, "Stelmach issues Cabinet team mandates outlining priorities" Online: <http://alberta.ca/acn/200803/23218F1BB3FB6-0861-6CC8-7CD81B8F085254D1.html> (13 May 2008).

and Edmonton and one officer who previously worked with the Manitoba PNP. Training of new program officers is conducted “in house”, based on job shadowing and mentoring.¹² In addition, CIC provides annual training on IRPA.

(ii) Processing Statistics

Since 2002, the Alberta PNP has processed over 3,000 employer applications, many of which involved multiple nominees, and allocated over 6,000 positions to employers. Almost 3,000 Provincial Nominee Certificates have been issued to date, resulting in approximately 1,400 Provincial Nominees and 2,300 dependents have become permanent residents under this program. In the fiscal year ending March 31, 2008, approximately 1,250 employer applications were processed, 3,376 positions were allocated to employers and about 2,000 worker applications were processed. In total, 1,658 nomination certificates were issued in 2007-8.¹³ Processing times averaged thirty-five (35) working days (7 weeks) for employer applications and twenty-two (22) working days (5 weeks) for nominee applications.

(b) **British Columbia**

(i) Ministry of Economic Development

Since 2006 the BC PNP operates under the mandate of the Ministry of Economic Development. The Honourable Colin Hansen is the Minister. In the 2008 Budget for British Columbia, the Minister and his Service Plan stated “The new changes to the Provincial Nominee Program to lower the investment threshold and fast track the process for business immigrants to create new business ventures in British Columbia will give B.C. a competitive edge for attracting offshore talent and investment.” As a key measure of performance, the Minister has increased the target significantly from 1,600 for Strategic Occupations in 2007/08 occupations to the 7,000 in 2010/11. These are significant increases in targets.

(ii) Management and Staffing

The BC PNP is managed by Ian Mellor, Director, Economic Immigration Programs. There are two managers, S. P. Poon and Michael Chew. In addition, there are 3 senior program advisers and 8 program advisers who process applications and another 5 administrative support staff. They come from a variety of backgrounds including CBSA, CIC, the legal profession and the private sector. There are plans to increase staffing to meet these new targets.

¹² Interviews with Brad Trefan, Senior Director and Joyce Conroy, Manager, Operations, on April 28, 2008.

¹³ Unofficial numbers provided by Brad Trefan, Senior Director on April 28, 2008.

5. Nuts and Bolts: Application Forms and Procedures

(a) Alberta

The Alberta PNP involves the following applications by category:

(i) **Skilled Worker Category (including International Graduates):**

To be eligible for the Skilled Worker Category and International Graduate Category, the job offer must be one that:

- is for permanent, full-time employment in Alberta;
- meets Alberta PNP criteria for a skilled worker or international graduate;
- complies with provincial employment and wage standards;
- does not conflict with an existing collective bargaining agreement; and
- is being made to a person with the requisite qualifications.

The Skilled Worker Category is generally for occupations in the NOC levels 0, A and B. Until recently, the retail and fast food service industries were excluded. The International Graduate Category is for foreign students who have completed a minimum two-year diploma or degree or one year graduate level program from a publicly funded university, college, technology institute or private, degree-granting institution in Canada. In order to apply, both of the PNP forms listed below, supporting documents and copies of the Application for Permanent Residence must be submitted at the same time to the Alberta PNP in Edmonton.

Forms and Procedures – Skilled Worker / International Graduate:

(A) Employer and Worker Application for a Skilled Occupation (ABPNP 005)

The Employer and Worker Application for a Skilled Occupation (ABPNP 005) was positively revised in September 2007. It includes an overview, instructions checklist and the application form itself.¹⁴ The application form is simple and straight forward, requiring the following information and supporting materials:

Employer Information: The form only requires basic employer contact information and an estimate of the number of PNP nominations the employer is expecting for the subject occupation within the next twelve (12) months. This section should be completed with all information about the employer itself, including the employer contact, rather than the representative. Submissions of counsel should also demonstrate that the employer is a viable enterprise doing business in Alberta that not only requires, but also will be able to sustain the permanent employment of the foreign worker(s) subject to the application. As such, these submissions should demonstrate that the employer is properly incorporated or registered to do business in Alberta and has an established production capability, plant or place of business in Alberta.

Candidate Information: candidate's name and contact details and with respect to the position, just the job title, whether it is permanent and full time, gross salary, how the candidate found out about it and whether it involves a union. More detailed information on the PNP candidate is required in the Application for Provincial Nomination.

¹⁴ The Employer and Worker Application for a Skilled Occupation (ABPNP 005) can be found online: http://www.alberta-canada.com/immigration/media/IA-PNP_abpnp005.pdf (14 May 2008).

Supporting documentation is critical and includes:

Employment Contract: The Employer and Worker Application also requires the submission of a signed employment contract. Previously, there was a redundant form for a Guaranteed Job Offer, which has been eliminated. As a practical matter, it is important to ensure that the detailed position description and the employment agreement are all consistent with the Employer Application.

Temporary Foreign Worker Information: If the foreign worker is in Canada on a Work Permit, then copies of Work Permits, LMOs, LMO applications and if the position is LMO exempt, then documentation supporting the exemption, such as a copy of the exemption opinion application and opinion issued by a Temporary Foreign Worker Unit

Job Information: This is only required if an LMO application is not included with the PNP application. Another extremely important point about the Occupation Information and Position Description is that unless eligible under a low-skilled pilot, the occupation must be consistent with NOC O, A or B. Canadian employers do not usually develop their job descriptions with reference to the NOC. Frequently, the list of duties, skills and education requirements for a position will overlap with one or more NOC titles. The skilled representative will evaluate the position description and clarify it to avoid questions about the relevant NOC and the possibility of it being rejected as ineligible.

The Skilled Worker / Professional who applies under the PNP must possess the qualifications and experience necessary to fill the position subject to the guaranteed job offer. Therein lies another skill in developing the position description. The key is not to develop a job description that matches the skills of the proposed candidate, but rather one that is objectively consistent with NOC Levels O, A or B and one for which the nominee is qualified. In fact, if a nominee meets most but not all of the requirements of the job description, the Alberta PNP may ask the employer to waive certain requirements in writing.

Also, if the position is one that is regulated by a professional association with licensing requirements, such as engineering or geophysics, then the PNP may require a “letter of no objection” from the licensing body stating that as long as the foreign worker complies with its licensing program, it will not object to employment in the profession in Alberta. This often imposes some limitations on the foreign professional pending licensure under provincial standards.

(B) Application for Provincial Nomination (ABPNP 003)

Also revised in September 2007, the Application for Provincial Nomination requires detailed information on the foreign worker’s identity, CIC application history, current occupation and salary, education, professional / industry certifications, relevant work history since age eighteen and language abilities. This form also requires information on all accompanying family members and their connections to Canada through relatives, prior visits, etc. It is certainly conceivable that this seemingly innocuous information about prior visits and connections to Canada could be checked against CIC visa information, so ensure that it is truthful and accurate.¹⁵

¹⁵ The Application for Provincial Nomination contains a Candidate’s Authorization to Collect and Disclose Personal Information. Sections 4.4 and 4.5 of the Cooperation Agreement address “Information Sharing and Research” and “Program Integrity”, respectively.

Both the applicant and the spouse must provide a detailed education and work history, with certified and if necessary, translated copies of certificates, diplomas and degrees, as well as reference letters from previous employers. This information is essential for the Program Officer to assess whether the nominee is qualified to perform the duties of the job offer. To avoid delays, avoid deficiencies relate to the failure of the skilled worker or dependents to verify education and work history. One very common mistake reported by the Alberta PNP is the failure to include properly certified English translations of documents.

Supporting documents required include certified copies of passports for the applicant and accompanying family members, certified copies of certificates for education and professional qualifications and reference letters from former employers verifying work experience. Copies are generally acceptable but if there are any questions regarding authenticity, originals may be required.

(C) CIC Application for Permanent Residence Forms

Finally, copies of all CIC Application for Permanent Residence documents must be submitted for consideration by the Alberta PNP. In fact, PNP Program Officers may comment and suggest revisions to these forms for consistency and completeness. I was at first surprised to receive comments on the federal forms, but got over it on the basis that some Program Officers were formerly CIC employees and the comments were just intended to avoid delays. This practice has generally been discontinued for employers with third party representatives and may be discontinued entirely, so ensure that your client's forms are complete and accurate in all respects. Note also that there is a CIC Guide for Provincial Nominees that should be referred to during this process.¹⁶

International Graduates

International graduates are also eligible to apply to the Alberta PNP based on a job offer that meets the criteria for a skilled worker. If education is completed in Alberta the international graduate must have obtained a diploma, degree, or have completed a graduate level program from a publicly funded community college, trade/technical school or university, or at a private institution authorized by provincial statute to confer degrees.¹⁷ If the education is completed elsewhere in Canada, the additional requirements are that the educational program must have been a minimum of two (2) years for undergraduates and one (1) year for graduate students; the job must be related to the field of study; and the international graduate must be employed in that field on a Work Permit with the employer in Alberta for at least six (6) months prior to applying to the PNP.

Foreign Credentials

Credential assessment is another area where the employer application must clearly demonstrate compliance with provincial standards for the particular occupation, particularly where regulated professions and compulsory trades are involved. Regulated occupations in Alberta generally require credential assessment by Internal Qualifications Assessment Service (IQAS) or

¹⁶ CIC Application for Permanent Residence - Guide for Provincial Nominees, online: <http://www.cic.gc.ca/english/pdf/kits/guides/EP7.pdf> (14 May 2008).

¹⁷ See online: <http://www.alberta-canada.com/immigration/immigrate/internationalgraduates.html> (14 May 2008). The list of PNP approved post secondary institutions is available at a link on this page.

professional associations (i.e. College of Physicians and Surgeons of Alberta).¹⁸ Compulsory trades require credential assessment and certification by Alberta Apprenticeship and Industry Training.

Some highly specialized occupations, such as electrical power system operator, involve training and certification that may not easily equate with curriculum generally available outside the electrical industry. In such cases, the employer application should objectively present the industry standards and the requirements of the position description with an adequate explanation of whether foreign credentials are applicable to the Canadian position and if so, why any assessment of the foreign credentials is unnecessary.

For each occupation, the foreign worker credentials must be assessed using an appropriate assessment mechanism, which could be internal to the employer, depending on the occupation and industry. Ultimately, if the PNP Program Officer is not convinced that an appropriate assessment mechanism has been used and that the foreign worker possesses the qualifications required in the position description, then the application will encounter delays and may ultimately be rejected.

Unions

If the occupation is subject to a collective bargaining agreement, the employer must provide evidence of consultation with and no objection by the relevant union. Collective Bargaining Agreements for organizations operating in Alberta can be searched by employer, union and keyword with the Collective Bargaining Agreement Filing and Retrieval System.¹⁹

(ii) Semi-Skilled Worker Category

The Alberta PNP was originally quite focused on skilled workers to the exclusion of industries that require people without formal education and training but with occupational experience. It has since expanded in consultation with various industry associations to include pilot projects and permanent programs to address the demand for workers in NOC C and D occupations including food and beverage processing, hotel and lodging, manufacturing, trucking and most recently, a pilot project for the food services industry in cooperation with the Canadian Restaurant and Foodservices Association.²⁰

To apply under the Semi-Skilled Worker Category, the PNP forms with supporting documents and copies of the Application for Permanent Residence must be submitted at the same time to the Alberta PNP in Edmonton. The employer must also possess a labour market opinion (LMO) confirmation or pre-approval for the applicable occupation, or both.

For each of the semi-skilled occupations, there are specific requirements under the Alberta PNP. To be eligible the offer must be for permanent, full-time employment in Alberta in a designated occupation in a designated industry. Each program has specific requirements for employer eligibility and worker eligibility. The latter are primarily related to basic education, work experience, language competency and job performance.

¹⁸ See online: <http://employment.alberta.ca/cps/rde/xchg/hre/hs.xsl/4512.html> (14 May 2008). It is important to note that IQAS will take about eight weeks to process a complete request for assessment and incomplete applications take significantly longer.

¹⁹ See online: <http://employment.alberta.ca/cps/rde/xchg/hre/hs.xsl/166.html> (14 May 2008).

²⁰ On May 26, 2008, Alberta PNP will begin accepting applications for servers, counter attendants and kitchen helpers under the Food Services Pilot Project.

For ease of reference, the links to the specific requirements are set out below for each industry:

- Food and Beverage²¹
- Hotel and Lodging²²
- Manufacturing²³
- Truck Driving²⁴

The manufacturing industry subcategory includes thirty-five (35) specified NOC C occupations. Alberta PNP requirements for these occupations include: English competency or employer-funded ESL training, employer plan for accommodation, settlement and retention and a minimum of four (4) years' experience in the occupation, including six (6) months in Alberta. Generally, the inclusion of manufacturing industry occupations in the Alberta PNP represents a positive step for the Alberta PNP.

Many employers in these industries do not have the experience or capacity to meet the PNP requirements without professional advice and assistance. In Alberta, government and industry associations are very involved with assisting their members to address worker shortages in semi-skilled occupations and lobbying the government to facilitate the entry of these workers on a permanent basis. Below we address the specifics of the application documents and supporting materials.

(A) Employer Application for a Semi-Skilled Occupation (ABPNP 001)

The Employer Application – Semi-Skilled Worker Category requires basic information on the employer and occupation, but detailed information and supporting documents on English language competency and requirements to perform job duties as well as accommodation, settlement and retention plans.

(B) Employer and Worker Application for a Semi-Skilled Occupation (ABPNP 002)

This form only requires very basic information on the employer, candidate and job. However, supporting documents are required including an employment contract, prior Work Permit, LMOs and most recent LMO application or if this does not apply, then a very detailed job description.

(C) Application for Provincial Nomination (ABPNP 003)

This is the same form as for Skilled Workers and International Graduates. It requires extensive information and supporting documents that for a semi-skilled worker, are usually more difficult to gather.

²¹ See online: <http://www.alberta-canada.com/immigration/immigrate/foodandbeverageprocessing.html> (14 May 2008). Also note the English language requirements for workers in the food and beverage industry were revised, effective November 1, 2007.

²² See online: <http://www.alberta-canada.com/immigration/immigrate/hotelandlodging.html> (14 May 2008).

²³ See online: <http://www.alberta-canada.com/immigration/immigrate/manufacturing.html> (14 May 2008).

²⁴ See online: <http://www.alberta-canada.com/immigration/immigrate/trucking.html> (14 May 2008).

(D) CIC Application for Permanent Residence

This is the same requirement as for Skilled Workers and International Graduates. Again, the bread and butter of a good representative is ensuring timeliness, accuracy and completeness on these forms to avoid delays.

(iii) **Strategic Recruitment Stream Pilot Project**

A very interesting initiative by the Alberta PNP is recruiting among compulsory trades, engineers and U.S. H-1B visa holders. The Alberta PNP started issuing invitation letters to skilled workers in Alberta upon their qualification as journeyman in their respective occupations. To date, the PNP has issued approximately 800 letters to Provincial Red Seal journeyman qualifying in Alberta since 2002. Currently, Red Seal certification letters issued by Alberta Apprenticeship and Industry Training are accompanied by an invitation to the PNP. The PNP has also started to issue invitation letters to engineering professionals employed by personnel agencies who sub-contract their services to engineering firms. Another initiative has been to attend recruiting events in the United States where H-1B specialty occupation workers may be invited to seek employment in Alberta and permanent residence under the PNP. The stated rationale for these types of recruiting efforts is that these people are already working in Canada or the United States and have met industry requirements for their occupations, so fewer resources are required to screen them for eligibility to be ready to work.²⁵ This pilot project is unique in that eligible foreign workers are able to effectively self-nominate, regardless of whether they are currently employed. To that extent, the Alberta PNP is not employer-driven.

(b) **British Columbia**

The BC PNP is also a one step process. The employer files the application at the BC PNP office. The only exception to this is an application for a registered nurse, registered psychiatric nurse or physician, then the application must go to Health Match BC.

At the time of application the employer must have a selected candidate. No blanket applications such as those used by Service Canada in the LMO process are accepted. The employer is applying for a nomination certificate for an individual nominee candidate. Group applications are not allowed.

The application is a joint application with the employer and the nominee candidate. The key factors listed by the BC PNP are:

- the occupation in which the nominee will be employed
- the current demand outlook for the occupation
- the wage for the position
- the nominate candidates qualifications
- the offer of employment
- employer's history and operations
- the economic benefits to BC
- the nominee candidate's ability to become economically established in BC

There are four categories under the Strategic Occupations.

²⁵ *Supra*, note 10.

(i) Skilled Workers

Skilled Workers are the majority of applications processed by BC PNP. The key factors that need to be addressed in any application are as follows:

The Occupation

As stated above BC PNP will only approve workers with Skill Levels O, A, or B. BC PNP however will not approve every occupation that meets that classification. There is a further restriction listed on the BC PNP webpage of ineligible occupations. For example ineligible occupations include:

- managers in social and community services
- public administration
- retail trade
- secondary and elementary school teachers
- clergy
- probation officers
- government program officers/researchers
- public librarians
- Hairstylists
- Technical personal service occupations
- clerical, administrative and financial supervisors
- bookkeepers
- secretaries
- paraprofessionals
- upholsterer's
- tailors
- jewellers
- sales and service supervisors
- insurance and real estate brokers and;
- operators and manufacturing process with a postsecondary qualifications

It has been the writer's experience, that the above listed ineligible occupations are more of a general guideline. An exceptional nominee candidate with significant talents or experience in the above ineligible occupations may still be considered. It is of course up to the employer to show why an individual is exceptional.

Demand and Outlook for the Occupation

It is important in the application to show that there is a high demand for the skills needed to fill the intended occupation or that there is a shortage in the economy of those skills. Applications will not be approved for occupations where there is a current surplus of workers domestically, or where the future prospects for in the occupation are poor. It is advisable to use statistics gained from sources such as Statistics Canada or Job Futures BC.

Wage

The wage an employer intends to pay the nominee candidate must be comparable to that for equivalent jobs in BC. BC PNP will take into consideration company size, geographic location, skill and experience level. In the writer's experience, BC PNP tends to be much more willing to look at these factors than

Service Canada. Bonuses, commissions, profit-sharing distributions are not considered but are worth mentioning.

Qualifications

Clearly the nominee candidate must be qualified for the job that the employer is looking to fill. If the position is a regulated position it is necessary to show the applicant meets the mandatory certification licensing, or registration. If meeting these qualifications is not possible at the time the application is filed it is necessary to set a plan as to when and how these qualifications will be met. It is important to document these qualifications by including certificates, in the case of tradesmen, reference letters and letters from clients, in the case of someone who was self-employed. If necessary, copies of the candidate's work can be helpful.

Offer of Employment

The employer needs to provide a written offer of employment. The offer must state:

- job title and duties
- rate of pay
- the employee's standards hours of work
- that the position is permanent and full-time

A normal probationary period of employment may be specified. Full-time is expected to be least 30 hours a week. The job must be permanent, so no pre-determined end date is allowed. Applications will not be accepted for contracts for service (no independent contractor agreements). If there is a collective agreement in place this agreement must be referenced. The written offer must be signed by both parties.

Employer's History and Operations

Employers must be:

- Incorporated, extra provincially registered or registered as a limited liability partnership in BC
- The employer must have a permanent establishment in BC
- The employer must have an operation in BC for least one year and must have at least five full-time employees in BC
- The employer's business must have financially sound history good workplace and business practices

Employment agencies and placement firms cannot use the BC PNP program, unless establishing an employer employee relationship with company candidates. Nominee candidates who own more than 10% of equity of a BC business cannot be nominated as an employee of the BC PNP. BC PNP does not accept applications for employers involved in sexually oriented entertainment or services.

Applications will be accepted from certain public sector and non-profit employers.

Economic Benefits to BC

It is necessary to qualify for the program to show that the hiring of the foreign worker will create significant economic benefits to BC, and contribute to the long-term net economic benefit of BC. These include such things as:

- providing a critical skill needed in BC
- creating or maintaining employment
- transferring skills and knowledge to Canadians
- accelerating the adoption of new technologies
- developing new products technologies services or markets.

The nominee must be able to show they have the ability to become economically established in BC. Applications will not be accepted from individuals with unresolved refugee claims in Canada, are in Canada illegally, are under a removal order in Canada, or prohibited from entering Canada. Applications will also not be approved if it appears likely that candidate's family income will be below the LICO.

It is important when filing an application that all documents required are provided on the initial application as they are checked upon receipt and will be returned if not complete.

Provincial Nominee Information

A checklist is available online. This is fairly detailed. There is however no separate guide. The essential forms are the Nominee Information Form, the Guaranteed Job Offer Form, and the Information Release Form. While a covering letter is not necessary as most of the information is provided in the forms or the requested documents it is the writer's practice to include a covering letter that summarizes information and makes the case for the nomination.

In addition, there are two separate forms for using an authorized representative, one for the nominee candidates and one for employers. The forms are all very self-explanatory and straightforward.

A copy of the federal application for permanent residence, (IMM 0008) must be submitted with the application. The permanent residence fees, police certificates and photographs do not need to be submitted.

(ii) Designated Health Care Professionals

This category is very limited and applies only to the following: registered nurses, psychiatric nurses and physicians recruited for provincial and regional health authorities by Health Match BC. Certain midwives also qualify under this program.

Registered and psychiatric nurse nominees must be registered, or eligible for registration, with the College of Registered Nurses in BC or the College of Registered Psychiatric Nurses of BC.

Physician nominees must practice in BC on a work permit for at least nine months and have a letter from the College of Physicians and Surgeons of BC and the supervising physician giving a positive assessment.

In the above cases it is the regional health authority that makes the application to BC PNP.

Midwife nominees must provide proof of eligibility for registration with the College of Midwives of British Columbia and have a letter of confirmation from an established practice group in British Columbia confirming their acceptance into the group as an affiliated midwife for at least six months.

(iii) International Graduates

This category differs from the Skilled Workers category in two ways. First, the nominee must have earned either a degree or diploma in BC. Second, the nominee does not need to have had work experience. The BC PNP will only consider applications for International Graduates who will be hired for eligible occupations in the Skilled Workers category.

Only certain degrees are eligible. These are listed on the BC PNP website. Should a potential nominee have a degree or diploma not listed it is worthwhile to contact BC PNP about the eligibility of other educational programs.

Eligible Degrees:

An undergraduate or graduate degree in any of the following fields:

- Natural sciences, applied sciences or engineering
- Health sciences
- Computer science, information systems or digital media
- Business or commerce
- Tourism, recreation and hospitality
- Transportation and logistics

Eligible Diplomas:

A 2-year diploma in any of the following fields:

- Applied sciences or technologies, or engineering
- Health sciences or technologies
- Computer science or technology, information systems or digital media
- Business or commerce
- Tourism, recreation and hospitality
- Transportation and logistics

BC PNP only deals with recognized institutions meaning the institution must be a BC public post-secondary institution, or a BC private institution offering a degree program as part of the BC Transfer System.

International Graduates must have completed at least part of their study program in BC – a minimum of two years for a bachelor's degree, and one year for a graduate degree. International Graduates with diplomas must have completed their entire study program in BC.

Nominee candidates who have earned an eligible bachelor's degree or a diploma in BC will be expected to have earned an overall mark of at least 70 percent (or equivalent grade-point average) in their program.

Nominee candidates will be required to include in their application the name of a faculty member or senior administrator of the BC institution where they studied for their degree or diploma who will serve as a reference.

Applications must be submitted within one year of the date shown on the nominee candidate's final official transcript. Should the candidate apply after one year from completion, the application will be considered under the skilled worker category.

This category is ideal for candidates have studied in Canada but do not have the requisite experience or skills to qualify under the Strategic Occupations category.

(iv) Entry Level & Semi-Skills Pilot Project

This is a new category commenced in 2008. Please note it is only a pilot project approved for two years.

It is a design clearly for people that are already working in Canada on work permits. It applies only to the tourism/hospitality and long-haul trucking industries. The occupations include:

- Hotel Front Desk Clerks
- Outdoor Sport and Recreational Guides
- Casino Occupations
- Maitres d'hotel and Hosts/Hostesses
- Bartenders
- Food and Beverage Servers
- Food Counter Attendants, Kitchen Helpers and Related Occupations
- Light Duty Cleaners (hotels only)
- Specialized Cleaners (hotels only)
- Janitors, Caretakers and Building Superintendents(hotels only)
- Doorkeeper, Hotel
- Guest Services Attendant, Hotel
- Dry Cleaning and Laundry Occupations (Hotels/Resorts only)
- Ironing, Pressing and Finishing Occupations (Hotels/Resorts only)
- Attendant, Sauna Room (Hotels/Resorts only)
- Hotel Valet

Employment requirements

Nominee applicants must have been employed full time in an eligible occupation by the sponsoring company on a temporary work permit for at least 9 months immediately prior to the date of application to the BC PNP, and must be legally employed by the sponsoring company at the time of application.

Long-Haul Truck Drivers

Employment requirements:

- Nominee applicants must have been employed by the sponsoring company as a long-haul truck driver on a temporary work permit for at least 9 months immediately prior to the date of application to the BC PNP, and must be legally employed by the sponsoring company at the time of application.
- Nominee applicants must have at least 2 years employment experience as a long-haul truck driver in the 3 years prior to their application to the BC PNP.
- Nominee applicants must hold a valid BC Class 1 driver's license and, if required, air brake endorsement and other certification (e.g., for transporting dangerous goods).

Employment Confirmation

Employers will need to submit a copy of the LMO obtained from Service Canada that authorized the original hiring of the applicant under the federal Temporary Foreign Worker Program.

For nominee applicants who were not hired through a LMO, employers will need to submit official records of remuneration, such as original cancelled checks or direct deposit confirmation, for the nine month period preceding their application.

Offer of Employment

In addition to the regular requirements for Skilled Workers the following is required: Enhanced severance equal to one month's pay, which is not to be reduced by notice in lieu and Employer-paid return air fare for any unplaced worker. If an unemployed nominee has not obtained suitable employment within 4 weeks of termination, the BC PNP will cancel the individual's nomination, and the original employer will be required to pay the air fare of the nominee back to his/her country of origin.

English Language Proficiency

Nominee applicants should have basic proficiency in English. If the LMO or BC PNP Guaranteed Job Offer Form indicates that no English language proficiency is needed for the job, the employer will pay for the nominee applicant to take one of the following approved English language tests: [TOEFL](#), [IELTS](#) and [LPI](#). If the applicant fails to demonstrate basic proficiency, the employer will pay for the applicant to enroll in a recognized ESL (English as a second language) program for a minimum of 6 months.

6. Confirmation of Acceptance and Visa Processing

(a) Alberta

In the event that the employee application is approved, the Alberta Provincial Nominee Program issues a one-page Confirmation of Acceptance. The Confirmation of Acceptance is to be placed on top of the Application for Permanent Residence being submitted to a visa office, with a PNP label on the outside of the envelope to notify the visa office that the Application for Permanent Residence should be placed in a priority queue. Approximately four weeks after the visa office receives the Application for Permanent Residence with Confirmation of Acceptance, it will open a file with a "B" number, send out medical and security clearance instructions and issue an acknowledgement letter advising that the file has been placed in a priority queue awaiting assessment. Applications for provincial nominees destined to Alberta that are submitted to the Regional Processing Centre in Buffalo are routinely transferred to the Seattle visa office for program efficiency. This file transfer does not appear to cause delays or processing issues.

(b) British Columbia

Once submitted correctly the applicant will receive a letter in a few weeks indicating that a file is opened, assigning a file number and informing the applicant of the wait times. If the application is incomplete the entire package will be returned. It is to take the time to ensure that applications are complete.

If additional information is needed BC PNP will usually write a letter or make a phone call requesting clarification or additional information. If no additional information is needed, a letter confirming acceptance is sent usually in 8 to 10 weeks. Included with the notification of acceptance are several bright orange BC PNP stickers that are to be used in the Application for Permanent Residence so that the embassy or consulate knows that the application is to be given priority. This of course is one large advantage of this program is that it speeds up the application for permanent residence, in Buffalo it means that the application for permanent residence is then completed in 6 to 9 months.

The application then must be sent to the post indicated when the application was made. This is an important practice point. BC PNP, when an application is approved, notifies the appropriate overseas post of the nominee's acceptance. If the nominee has a Canadian Work Permit valid for at least one year, BC PNP assumes, unless otherwise indicated on the application, that the application is to be sent to Buffalo. If the nominee is living overseas, they will be sent to the overseas post that processes where the nominee is residing. This can create problems if the intention was to have the nominee arrive in Canada on a work permit and then make the application Buffalo.

Work Permits

One of the big advantages of BC PNP is that the employer can request that BC PNP issue a letter to facilitate the issuance or extension of a work permit by CIC.

The authority for this is found specifically in the Agreement for Canada - British Columbia Cooperation on Immigration 2004, Annex C, 3.13. The section states that where an individual is nominated by British Columbia has received a job offer from the British Columbia-based employer, the responsible Canadian Visa Officer may issue a temporary work permit. The work permit is issued under section 204(c) of IRPR. The province must provide a letter which states that: the nominated individual is urgently required by the employer; and the province is of the opinion that the offer would create significant economic, social or cultural benefits opportunities; the employment is not part-time or seasonal; and the wages and working conditions of employment would be sufficient to attract and retain Canadian citizens and permanent residents, and requests the visa officer to issue a temporary work permit.

This letter is then used by the nominee to apply for a work permit at the POE or the post abroad.

British Columbia Business Category

BC PNP has had a business program since 2002. The business program involves two steps, including the Work Permit and the nomination for Permanent Residence. The numbers of applications however have been small and compared to the Strategic Occupations stream. Major changes were made effective September 26, 2007. After recent changes in the BC PNP in September 2007 to the business categories use of the program increased 182%. In 2006-2007, 61 applicants were approved for Work Permits. The target for 2010-11 is 280. This is a significant increase which BC PNP is working towards.

BC PNP has three separate business categories; Business Skills, Regional Business and Strategic Projects. All require active and ongoing participation in the day-to-day management direction of the business.

The process for BC PNP business categories of Business Skills and Regional Business is commenced with a preliminary application. This preliminary application is free and very short. No supporting documentation is required, but it is recommended to include a resume for the nominee candidate. It normally takes six to eight weeks for BC PNP to respond. If BC PNP accepts the preliminary application a formal application is then submitted. The formal application comes at a cost of \$3000.

The formal application requires evidence showing business experience, qualifications and financial resources and a detailed business plan. There will then be a personal interview. If successful a Performance Agreement must be signed. This sets out terms and conditions relating to implementing the business proposal and key steps and milestones.

Fast Track

Once the Performance Agreement is signed the nominee has a choice of taking the Fast Track process. This allows the applicant to file right away for permanent residence. In the interim, the nominee candidate receives a letter from BC PNP supporting an application for a two-year work permit. This requires a Deposit Agreement providing for a \$125,000 deposit with the provincial government. This money is conditionally refundable upon the nominee meeting the milestones set out in the agreement within six months of the work permit being issued. A report is required by the nominee at the end of six months showing that they have met the milestones set out in the Performance Agreement. Should the applicant not fulfill his or her obligations pursuant to the Performance Agreement or the Deposit Agreement, then the nomination can be cancelled.

Regular Nomination

A regular nomination requires no deposit of \$125,000. A nomination certificate which allows the applicant to apply for permanent residence is only issued upon meeting the terms set out in the performance agreement.

It is important to note that BC PNP provides a list of ineligible businesses in each category. This is available on their website.

Business Skills

The major requirements of this category are the following:

- Make an investment of \$400,000
- create three new jobs in a business for Canadians or permanent residents
- Own a least one third equity of the business
- have a personal net worth of \$800,000

Regional Business

This category is similar to the Business Skills category, but the business must be outside the Greater Vancouver metropolitan area or the Abbotsford metropolitan area. The capital requirements are less. A \$200,000 investment is needed and the personal net worth of at least \$400,000. In addition, the business must provide at least one job for a Canadian citizen or permanent resident.

This program currently accounts for the majority of business cases.

Strategic Projects

This allows foreign controlled companies setting up a business in British Columbia to bring in a maximum of five key managerial, professional or technical staff.

The main requirements are an investment of \$500,000 and the creation of three jobs for Canadian citizens or permanent residents for each nominee. The nominees of course must have essential skills needed to establish or expand the business in British Columbia. The process is similar to that of the Regional Business and Business Skills programs except that a Fast Track option is not available.

7. Strategies and Practical Tips for Employers

(a) Alberta

Many Albertan employers are not familiar with the PNP or simply do not have the experience or capacity to present a business case for employing a foreign worker on a permanent basis. But when LMOs are taking 6 months or more, it is more common to recommend that the employer offer permanent employment and apply under the PNP in order to retain the worker in the long term. As the Alberta PNP generally does not announce its pilot projects publicly, employers and their representatives are encouraged to inquire directly with the PNP to find out whether there are additional options under the PNP.

Particularly for industries involving semi-skilled occupations that are eligible for PNP nominations, the program contemplates the role of a Ministry Specialist assisting the employer to develop a business case for the application. In fact, many employers understand the difficulties they face as a result of skills shortages but do not have the resources or inclination to engage in extensive consultations with a Ministry Specialist. Instead, they may retain a lawyer to develop the business case in consultation with the Ministry Specialist. This is a critical component of the application and an excellent opportunity for the lawyer to add value based on truthful, accurate and creative submissions regarding industry conditions, the employer's business and the rationale for hiring a foreign worker.

It cannot be overstressed to ensure that the employer application and all of the supporting documentation are complete and compliant with the PNP instructions. This is clearly more onerous where semi-skilled occupations are involved and the employer is responsible for documenting English language proficiency, accommodation, settlement and retention plans.

(b) British Columbia

The first key question that the employer has to ask is "Is there a critical shortage in BC of this skill or is there a need for knowledge and skills that cannot be met by the B.C. workforce?" While this has become easier with unemployment in the Lower Mainland reaching a 50 year low of about 3% it is still the most important element. The BC PNP website has lists of eligible occupations, it is important to remember that this is not exhaustive, but it give a good starting point as to what occupations are being approved.

Submitting a completed application goes a long way in speeding up the process. It is also important to provide as much detail as possible using third-party documents where possible. Tax returns and balance sheets prepared by accountants create an independent picture of the business for the program advisor reviewing the file. Attempts to recruit Canadians should also be documented.

8. Strategies and Practical Tips for Foreign Workers

(a) Alberta

If you are or represent a foreign worker who is in Alberta or interested in immigrating to Alberta, it is very important to consider whether the PNP would facilitate expedited immigration to Canada. If so, consider approaching the employer about its willingness to participate in the application process and to cover all or a portion of the costs associated with a PNP application. In fact, legal representatives may be able to facilitate with the discussion of costs, which may be a sensitive issue, particularly if the employment relationship has only begun. Nevertheless, under current labour market conditions, many employers are willing to share or cover all of the costs as part of their retention strategies. If successful, the employer secures a long term employee who as a permanent resident, is no longer subject to the

requirements and costs associated with obtaining LMOs and Work Permits indefinitely. However, employers must also understand that foreign workers have the same rights to mobility as do Canadian citizens and permanent residents.

For foreign workers that possess Red Seal journeyman trade certification, engineering or other specialized qualifications that make them job ready in demand occupations, consider whether they may be eligible under the Strategic Recruitment Stream Pilot Project to self-nominate and participate in the Alberta PNP without employer participation. Most recently, the Alberta PNP has gone even further to permit recruiting agencies to be the employer of engineers to facilitate applications under the program. This flexibility appears intended to permit a few large engineering personnel agencies with track records in Alberta to nominate engineers they contract to clients. However, it is foreseeable that other less qualified recruiters may attempt to exploit this opportunity.

Finally, regardless of whether you are a semi-skilled worker (now including those in the food services industry), trades person with Interprovincial Red Seal certification, chef, cook, engineer or engineering technician with a secondary employer (not directly employed with an Engineering, Procurement and Construction firm), or a professional, inquire with your employer, industry association and directly with the PNP to find out about existing, new and pilot programs that may facilitate your immigration to Alberta.

(b) British Columbia

It is important for foreign workers to realize that a work permit received under the BC PNP is of course issued only for work with that specific employer. Decisions to change employers or quit employment before permanent residency is finalized invalidate the permanent resident application of the nominee. Therefore it is important for workers to apply for permanent residency as quickly as possible to get this processed as soon as possible to minimize the risk. If a nominee on a Work Permit loses his or her job, it is of course possible to be nominated again under the BC PNP by a different employer, but this can be expensive, time-consuming and stressful.

As mentioned above it is very important on the application to the BC PNP to indicate which post the permanent resident application is to be processed as waiting times differ dramatically from post to post.

For Business Program applicants to the BC PNP, it has been the writer's experience that once commitments are made under a Performance Agreement, the flexibility to change these commitments with BC PNP are more difficult for than most business people would like. Therefore it is always important to ensure that the nominee is committed to the business plan and understands the limitations set by the BC PNP. It is also important to explore other immigration options before committing to a BC PNP business category. Often categories such as intracompany transfer or significant benefit may provide the adequate immigration instrument that the client is looking for.

9. Conclusions

(a) Alberta

The Alberta PNP has a mandate to address skilled labour shortages in key sectors of the economy. Since its inception in 2002, the program has developed from one focused on highly-skilled occupations to more and more semi-skilled occupations. In fact, for the fiscal year ended on March 31, 2008, almost twenty-

five percent (25%) of the nominations in Alberta were in the food processing industry.²⁶ The addition of manufacturing occupations to the Semi-Skilled Category in May 2007 is viewed as a positive step to facilitate worker recruitment and retention for manufacturers. However, the manufacturing occupations category has been underutilized to date.

Annual targets for nominations in Alberta have been adjusted downward from 5,000 and 8,000 to 4,000 and 5,000 nominations per year in 2008-9 and 2009-10, respectively.²⁷ In this context, the Government of Alberta is undertaking a review of its immigration framework strategy and the role of the PNP in the overall framework. It is anticipated that this review will result in some new focuses which may include a family stream²⁸ and even a business stream similar to that in British Columbia and other provinces.

One major difference that is apparent between the PNPs in Alberta and British Columbia is the practice of issuing a letter pursuant to Regulation 204 requesting Citizenship and Immigration Canada to issue a Work Permit without an LMO. Many practitioners understand that R204 letters are routinely issued in Vancouver, whereas this is regarded as an exceptional practice in Edmonton. Clearly there is potential for the PNP to be used to circumvent the LMO process. However, given the provincial authority under the Cooperation Agreement, particularly in cases when prevailing wage and occupational demand are not at issue, it seems logical to proceed with the request for a Work Permit to meet the employer's needs in the short term. After all, the PNP application has already been processed and approved. The apparent differences in approach to Work Permit issuance under the PNP will undoubtedly be discussed at the Federal-Provincial Working Group on PNPs and perhaps some guidelines will be forthcoming.

Since its inception in 2002, the Alberta PNP has developed to the point where it is now well-regarded in terms of processing efficiency, but somewhat limited in terms of advantages over the temporary foreign worker program, particularly for occupations that are LMO-exempt. Nevertheless, for those occupations that are eligible under the Alberta PNP, processing efficiency is a huge advantage if it means permanent residence in twelve to eighteen months rather than significantly longer under federal skilled worker and other programs. For those employers and occupations, the Alberta PNP is a silver bullet.

(b) British Columbia

The BC PNP Strategic Occupations has truly been a silver bullet during the last year. Times for LMOs rose in BC to as long as thirty weeks. Employers have seen a great advantage in nominating candidates that could receive work permits within as little as eight weeks. The program is also proven to be extremely flexible in the variety of occupations that are approved under it. Finally, the BC PNP has continued to keep processing times at reasonable levels and staff continue to be facilitative of inquiries from nominees and their representatives.

The new semi-skilled worker program has responded to demands from industry sectors that are experiencing extreme labour shortages. This is a pilot project commenced February 2008 and it remains to be seen if this project will continue if processing times for LMOs decrease or if nominees brought in under these categories do not thrive in the B.C. economy.

²⁶ *Supra*, note 11. In 2007-8, 780 out of approximately 3,376 positions allocated under the Alberta PNP were for the food processing industry.

²⁷ *Ibid.*

²⁸ Section 4.3.5 of the Cooperation Agreement provides: "Canada will consult Alberta on the development and implementation of policies that encourage reunification of family from abroad. Alberta will have the opportunity to participate in the development and implementation of those policies and programs and strengthen and enforce sponsorship provisions and obligations."

The business program has recently been reworked and has lowered capital requirements in most categories. However, it has added an ever expanding list of ineligible businesses. The business program represents a very small percentage of the BC PNP nominated and it remains to be seen if the changes will in fact produce the desired target increases and applications under this program.

(c) **General Conclusions**

The Provincial Nominee Programs in Alberta and British Columbia have been in operation since 2001-2002. Initially focused on skilled workers, both programs have evolved to include semi-skilled occupations to address industry pressures. Unique features have been added to each program including the small business program in British Columbia and manufacturing occupations and strategic occupations recruitment stream in Alberta, endeavouring to be innovative within the framework of the applicable federal-provincial agreement.

Both PNP programs are preparing for major expansions, with targets of 5,000 nominations each in 2009-10 and increases thereafter. At the same time, the provincial governments are undertaking significant reviews of the business models for PNPs with the objective of charting a course forward that fosters sustainable economic growth. Although the Government of Canada is encouraging the provinces to adopt a standardized form of federal-provincial agreement, it is expected that in program development and implementation, the PNPs will remain flexible and focused on factors that drive the local economy.

For employers and foreign workers destined for Western Canada, the PNPs present many opportunities for expedited permanent residence. Practitioners are well-advised to stay informed, always keeping in mind that these programs are dynamic and flexible. Overall, PNPs in Western Canada represent an evolving opportunity for businesses and, to the extent that they allow businesses to overcome delays associated with the federal system, the silver bullet.